JANET TUNG
California State Bar No. 231682
FEDERAL DEFENDERS OF SAN DIEGO, INC.
225 Broadway, Suite 900
San Diego, CA 92101-5008
Telephone: (619) 234-8467
Email: Janet_Tung@fd.org

Attorneys for JAMES DEWAYNE MCPHERSON

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE JANIS L. SAMMARTINO)

JAMES DEWAYNE MCPHERSON, Petitioner, v. UNITED STATES, Respondent.	)	Civil Action No. 08CV0032-JLS Criminal No. 89CR0940-JLS **PETITIONER'S REPLY**

INTRODUCTION

James McPherson was a young black man with two small daughters when he was sentenced to 262 months in federal prison. Mr. McPherson was convicted of involvement in a street-level crack retailing operation that was busted in 1989 with 1.3 kg of crack and various firearms. He was twenty-four years old then. At the time, the base offense level under the Sentencing Guidelines for that amount of crack was 36, based on a graduated scheme calibrated to the mandatory minimums set forth by statute. The Guideline ranges for threshold quantities were set so that the low end of the range would be above the statutory minimum penalties. The resulting ranges were set by the Sentencing Commission to correspond to the 100-to-1 ratio between crack and powder cocaine sentencing statutes.

Eighteen years have passed. Mr. McPherson is now forty-two. He is still in prison; his daughters are in college. And while Mr. McPherson was serving his time, the Sentencing Commission developed and reformed its view on crack sentencing. After collecting data and conducting research over the past two decades or so, the Sentencing Commission concluded that the Guideline scheme based on the 100-to-1 ratio was too harsh. The ranges it generated "fail[ed] to meet the sentencing objectives set forth by Congress." Kimbrough v. United States, 128 S. Ct. 558, 568 (2007). In response, the Commission amended the Guidelines to reduce the disparity between crack and powder cocaine, shifting the scheme downwards, and made those amendments retroactive. See U.S.S.G. § 1B1.10(c); U.S.S.G. Appx C, amend. 706. The new base offense level for 1.3 kg of crack is now 34. These changes enable a court to fix the lengthy sentences under the former Guidelines that, like Mr. McPherson's, are "inconsistent with [Congress's] goal of punishing major drug traffickers more severely than low-level dealers," and which "foster[] disrespect for and lack of confidence in the criminal justice system" because they "promote[] unwarranted disparity based on race." See Kimbrough, 128 S. Ct. at 568.

Mr. McPherson is the person the retroactive crack amendments were designed to help: the "black offender" whose "severe sentence[] required by the 100-to-1 ratio" under the old guidelines produced the "anomalous result that retail crack dealers get longer sentences than the wholesale drug distributors who supply them the powder cocaine." Id. at 568 (quotation marks omitted). He has already served well over the 210-month sentence that a two-level deduction would generate under the amendments. Because Mr. McPherson is scheduled for release on October 31, 2008, the full 52-month benefit under the amendments is no longer available to him. He therefore asks only that this Court order his sentence modified to **time served, effective immediately**. As time is of the essence, Mr. McPherson respectfully requests this Court to rule on his motion expeditiously.

ARGUMENT

I.

THE RETROACTIVE AMENDMENTS ARE PRESUMPTIVELY APPLICABLE TO MR. MCPHERSON

Mr. McPherson is eligible to be resentenced under the amended Guidelines, see 18 U.S.C. § 3582(c)(2); U.S.S.G. § 1B1.10(c) (amend. Mar. 3, 2008) (listing Amendment 706); the government agrees.

See Opp. at 4-5. The parties also agree that, applying the amended Guideline, U.S.S.G. § 2D1.1, would reduce Mr. McPherson's adjusted offense level from 38 to 36. At Criminal History Category II, the sentencing range would go down from 262-327 months to 210-262 months. Mr. McPherson was originally sentenced to the low end of the range, 262 months; under the amended Guidelines, he would have gotten 210 months—about four and a half years less time. Mr. McPherson has already completed almost his entire 262-month sentence. He is due to be released on October 31, about six months from now. Because he falls squarely within the "mine run of cases" contemplated by the Commission when it sought to mitigate the unfair consequences of the old crack guidelines, see Rita v. United States, 127 S. Ct. 2456, 2465 (2007), and he has substantial evidence of rehabilitation and good prospects upon release, see 18 U.S.C. § 3553(a), this Court should exercise its discretion to grant Mr. McPherson a sentence reduction to time served.

A. The Sentencing Commission's Reasons For Amending § 2D1.1 Apply to Mr. McPherson

The Sentencing Commission, in carrying out its "important institutional role" of refining national sentencing standards, see Kimbrough, 128 S. Ct. at 574, determined that the former Guidelines yielded sentences so unjustifiably severe for crack offenses that they "undermine[d] various congressional objectives set forth in the Sentencing Reform Act and elsewhere." U.S.S.G. amend. 706 (Nov. 1, 2007). Crack cocaine offenses, under the 100-to-1 ratio implemented by the old Guideline, are "three to six times longer than those for powder offenses involving equal amounts of drugs." Kimbrough, 128 S. Ct. at 566. This is true here: if Mr. McPherson's offense involved 1.3 kg of powder cocaine instead of crack, his low-end sentence would have been 87 months[1]—three times less than the 262-month sentence he actually received. Indeed, if the crime involved powder, Mr. McPherson would have to have possessed somewhere between 50 and 150 kilograms, or at least as much cocaine as the weight of an adult person, to trigger the same Guideline range. Someone with that much powder cocaine, as the Supreme Court has recognized, would be much higher up on the distribution chain than Mr. McPherson's street-level operation. See Kimbrough, 128 S. Ct. at 568 ("[T]he crack/powder disparity is inconsistent with the [Anti-Drug Abuse Act of 1986's] goal of punishing major drug traffickers more severely than low-level dealers. Drug importers and major traffickers generally deal in powder cocaine, which is then converted into crack by street-level sellers.").

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[1]The calculation is as follows: 1.3 kg of powder cocaine yields a base offense level of 26 under § 2D1.1; applying the same adjustments results in offense level 28. At Criminal History Category II, the range is 87-108 months.

In short, the Commission recognized it needed to fix the Guidelines because its "penalties overstate the seriousness of the crack cocaine offenses and fail to provide adequate proportionality." United States Sentencing Commission, Report to Congress: Cocaine and Federal Sentencing Policy (May 2007), at 8, available at http://www.ussc.gov/r_congress/cocaine2007.pdf [hereafter "May 2007 USSC Report"]. This problem was compounded by the "unwarranted disparity based on race" caused by the "crack/powder sentencing differential," which imposes its most severe sentences "primarily upon black offenders"—as is the case with Mr. McPherson. See Kimbrough, 128 S. Ct. at 568 (quotation marks omitted).

As a temporary fix, the Commission shifted the crack sentencing scheme downwards: "crack cocaine quantities above and below the mandatory minimum threshold quantities will be adjusted downward by two levels." Id. at 9 (describing the effect of Amendment 706).[2] This was only a "partial remedy" to the "problems associated with the 100-to-1 drug quantity ratio . . . so urgent and compelling" they warranted immediate and retroactive amendment of the Guidelines; the Commission also urged Congress to take action. See U.S.S.G. amend. 706. Most of the benefit of these sentencing reforms are, however, no longer available to Mr. McPherson. Under the reformed view taken by the amendment, which only "partial[ly]" mitigates the unfair severity of crack sentences, Mr. McPherson would have been sentenced to 52 months less time in custody (comparing the low end sentences of 262 and 210 months). Calculating backwards from his October release date, under the Commission's reformed view of crack sentencing, Mr. McPherson has already spent four years too many in prison.

B. Just as Mr. McPherson Was Originally Sentenced to the Low End of the Former Guidelines Range, the Low End of the Amended Gudelines Range Is the Appropriate Sentence Now

Absent evidence to the contrary, the "fundamental" change in "philosophy and statistical assessment" that the crack amendment represents should be applied to Mr. McPherson to allow him what little benefit remains before he completes his original sentence. See United States v. Schroeder, No. 06CR00029, 2008 WL 648030, at *1 (W.D. Va. March 7, 2008) (unpublished); cf. U.S.S.G. § 1B1.10, background cmt. (inclusion of an amendment in the list of retroactive provisions "reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing"). Numerous courts all over the country have reduced low-end crack sentences to the low end of the amended range, and this Court would be on sound precedential footing to do the same.[3]

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[2]The Commission concluded that the "manner in which the Drug Quantity Table in § 2D1.1 . . . was constructed to incorporate the statutory mandatory minimum penalties for crack cocaine offenses is an area in which the Federal sentencing guidelines contribute to the problems associated with the 100-to-1 drug quantity ratio." U.S.S.G. amend. 706. The problems were due to drug quantity thresholds that were set so the bottom of the range was "above the statutory mandatory minimum penalties"; Amendment 706 modified the ranges and offense levels so the ranges "include the statutory mandatory minimum penalties." Id.

A reduction is particularly appropriate here. At Mr. McPherson's sentencing in 1991, Judge Rhoades settled on a sentence at the low end of the then-mandatory Guidelines range. The record shows that he regarded even that sentence to be too long, but relied heavily on the judgment of the Sentencing Commission to sentence Mr. McPherson to the low end of the range. See Sentencing Transcript at 24 (attached as Exhibit 2 to the Opposition) (observing that 262 months "is a long time when he only gets 15 percent off of that time. So he is looking at a long, long time. . . . Congress reflecting, I guess, the will of the people, ha[s] decided that this is what it should be. So that would appear to be what it should be, 262 months."). Just as Judge Rhoades deferred to the Commission's judgment at Mr. McPherson's original sentencing, this Court should again apply the same deference to the Commission's judgment in reducing the applicable range. Because Mr. McPherson's sentence cannot be reduced to 210 months, as he has already served more than that, this Court should amend his sentence to time served, and order that his supervised release term be informal and "unsupervised" to compensate him for the four years of extra time he has already served.

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[3]See, e.g., United States v. Nigatu, Crim. No. 00-18 (PAM), 2008 WL 926561 (D. Minn. April 7, 2008) (unpublished) (reducing 108-month sentence, the low end of the 108-135-month guideline range, to 87 months, the low end of the 87-108 month range resulting from the two-level offense level reduction); Schroeder, 2008 WL 648030, at *1-2 (reducing the sentence to the low end of the range reached by applying the 2-level reduction under the amended Guidelines and holding all other things equal); United States v. Smith, No. 06-60138-CR, 2008 WL 906774 (S.D. Fla. April 3, 2008) (unpublished) (same; reducing 70-month sentence to 57 months); United States v. Donaldson, No. 00-cr-37-FTM-29DNF, 2008 WL 818609 (M.D. Fla. Mar. 25, 2008) (unpublished) (same; reducing 168-month sentence to 136 months); United States v. Rubick, No. 03-CR-111, 2008 WL 833510 (E.D. Tenn. Mar. 26, 2008) (same; reducing 63-month sentence to 78 months); United States v. Greimann, No. CR05-3005-LRR, 2008 WL 747176 (N.D. Iowa Mar. 18, 2008) (same; reducing 51-month sentence to 46 months); United States v. Marquez, No. 02-CR-77-01-PB, 2008 WL 638251 (D.N.H. Mar. 5, 2006) (same; reducing 70-month sentence to 57 months); United States v. Williams, No. 03-CR-96-FTM-29DNF, 2008 WL 660301 (M.D. Fla. Mar. 6, 2008) (same; reducing 292-month sentence to 235 months). Accord United States v. Diaz, No. CR-02-1327-CPS, 2008 WL 789885 (E.D.N.Y. Mar. 20, 2008) (reducing 84-month sentence, 26% of the low end of the original range, to 60 months, 26% of the low end of the newly calculate range); United States v. Williams, No. 05-CR-274, 2008 WL 925125 (E.D.N.Y. Mar. 14, 2008) (reducing 21-month sentence on crack charge to 17 months, where the original sentence reflected a substantial downward departure, reasoning that "a reduction comparably less than the amended guideline range" was appropriate).

II.

THE SECTION 3553(a) FACTORS FAVOR IMMEDIATE RESENTENCING TO TIME SERVED

Consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a), the second step of the Court's analysis here, favors granting Mr. McPherson's motion for reduction. See 18 U.S.C. § 3582(c)(2) ("the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable"). The reasoned judgment of the Sentencing Commission in amending the Guidelines, Mr. McPherson's demonstrated record of rehabilitation in custody, and his strong prospects for successful readjustment all line up in favor of granting a reduction. The government's arguments to the contrary rely erroneously on offense conduct that was already taken into account at the time of sentencing, and do not contribute to the § 3582 analysis.

A. The Nature and Circumstances of the Offense

The § 3553 factors weigh in Mr. McPherson's favor. First, the circumstances of the offense were fully accounted for in the Guidelines calculations at sentencing, and, moreover, reflect the prototype offender the Sentencing Commission felt was treated with unfair severity. Mr. McPherson convicted of possessing and conspiring to possess 1.3 kg of crack cocaine with the intent to distribute, a quantity that was accounted for in the calculation of the Guideline range. See Opp. Exh. 2 at 22 (calculating base offense level of 36). Firearms were found on the premises, and resulted in a two-level enhancement to Mr. McPherson's offense level, adding 52 months to the low-end sentence. See id. The nature and circumstances of the offense show that Mr. McPherson was a "street-level" player, not one of the "[d]rug importers and major traffickers" higher up on the distribution chain. See Kimbrough, 128 S. Ct. at 568. His sentence therefore exemplifies the crack/powder disparity that the Sentencing Commission's amendment was targeted to ameliorate. See id. (the 100-to-1 ratio creates the perverse result of punishing low-level dealers more severely than major drug traffickers).

The government's arguments that drug quantity and the fact of the firearm enhancement preclude a § 3582 reduction, see Opp. at 7-10, make no sense. If drug quantity alone were a reason to deny

Mr. McPherson a reduced sentence under the amended Guidelines, the Sentencing Commission would never have amended the sentencing range for the quantity at issue. See Schroeder, 2008 WL 648030, at *1 (overruling the government's objection to the sentence reduction on the basis of the large quantity of crack cocaine and the defendant's criminal history because these factors were already "taken into consideration when the court originally sentenced the defendant"). The same is true of the firearm enhancement, the most common aggravating factor in crack offenses, which is present in approximately 25% of crack convictions. See May 2007 USSC Report, at 32-35. The firearms, moreover, have already been accounted for in the 2-level enhancement to Mr. McPherson's offense level. See Rubick, 2008 WL 833510, at *1 (rejecting the government's argument because the firearms had been accounted for at sentencing "and it is not necessary to further punish the defendant for possession of the firearms by denying him the benefit of the new crack cocaine guidelines").

B. The History and Characteristics of the Defendant

Mr. McPherson is not the same man who was convicted of the crack offenses in 1989. For starters, Mr. McPherson is now 41 years old; he is no longer a young man in his early twenties. His children, Shadaria and Karya, just eighteen months and three months old when he went into custody, have now graduated from high school. They are in college now, and Karya is studying to be a pediatrician. In the past eighteen years he has spent in prison, Mr. McPherson has missed their high school graduations, the trials of adolescence, discoveries of childhood, and even Karya's first steps and first words. Had he been sentenced to 210 months under the Guidelines applicable now, he would have been back in their lives four years ago, when Shadaria was 16 and Karya was 14. Mr. McPherson has been away from his family for too long already.

The past eighteen years in custody has had a strong rehabilitative effect. Mr. McPherson has made serious efforts to advance his education. He attended Taft College, graduating in 2003 with an Associate's degree in General Business, and making the President's List for two semesters in a row, an honor reserved for the top fifty students. See Appendix A. At Taft, Mr. McPherson successfully completed courses in Real Estate, Real Estate Finance, Microsoft Excel, and Basic Commodities. See Appendix B. Mr. McPherson has also taken numerous other self-betterment courses in custody, including classes in conflict resolution, self reflection, HIV/AIDS education, and drug education. See Appendix C (certificates spanning 1998 to

2008). Mr. McPherson has been employed, working for eight years as a warehouse worker, twice receiving certificates of outstanding performance, and now works in the recreational facility. See Appendix D. He has become a Muslim, and plans to join a mosque when released. Mr. McPherson's record in custody demonstrates a strong likelihood of successful readjustment to the community.

C. Other Relevant Sentencing Concerns

As discussed above, the careful analysis and consideration of the § 3553(a)(2) factors by the Sentencing Commission in retroactively amending § 2D1.1 are applicable with full force to Mr. McPherson. The eighteen years he has already served have been more than enough to "reflect the seriousness of the offense, . . . promote respect for the law, and . . .provide just punishment" and deterrence. See 18 U.S.C. § 3553(a)(2)(A)-(C). There is no educational or medical reason to keep Mr. McPherson in custody. See id. at § 3553(a)(2)(D). The need to avoid unwarranted disparities between Mr. McPherson and defendants being sentenced under the new Guidelines also favors the reduction. See 18 U.S.C. § 3553(a)(6). There is nothing to suggest that Mr. McPherson's case lies outside the heartland of cases the Sentencing Commission had in mind when it promulgated the retroactive amendments.

Moreover, Mr. McPherson's prospects upon release are strong. He will live in San Diego with Koryn Harris, his girlfriend of twenty years, and their daughter Karya. His parents live nearby in the Los Angeles area and are supportive. Mr. McPherson is well-equipped with skills he will need to find employment in the real estate and finance fields, and is highly unlikely to reoffend. There is no indication that he suffers from drug addiction or posed a serious disciplinary problem in custody. Mr. McPherson's good behavior strongly militates in favor of ordering his immediate release. See, e.g., Williams, 2008 WL 921525, at *4-5 (finding that the defendant, who, while in prison, had obtained his GED, taken courses in business and film, and completed a drug abuse treatment program, and incurred only two minor disciplinary infractions, had "taken charge of his life in prison and has rehabilitated himself"; observing that "[i]t is unlikely that he will engage in criminal activity again"); see also Diaz, 2008 WL 789885, at *4 (ordering immediate release of crack offender who had demonstrated efforts at self-improvement and generally good conduct).

A reasoned and just application of the § 3553(a) factors and the judgment of the Sentencing Commission counsels that Mr. McPherson be resentenced to time served to be followed by five years of "unsupervised" supervised release. As he has only six months left to serve, modifying the terms of his supervised release to remove the reporting and notification requirements is appropriate to account for the fact that he has already served at least four years more in prison than he would have under a 210 month sentence. Mr. McPherson respectfully requests that this Court grant his motion expeditiously and issue an order to the Bureau of Prisons directing his immediate release.

IV.

CONCLUSION

For the foregoing reasons, and as set forth in his Motion, Mr. McPherson respectfully requests that this Court resentence him forthwith to time served, to be followed by five years of "unsupervised" supervised release.

Respectfully Submitted,

/s/ Janet C. Tung

DATED: April 22, 2008

JANET C. TUNG
Federal Defenders of San Diego, Inc.
Attorneys for Mr. McPherson

APPENDIX A

TAFT COLLEGE
West Kern Community College District

March 28, 2002

James McPherson
P.O. Box 7001
Taft, CA 93268

Dear James:

Because of your academic achievements, you are an honor member of the President's List for the Fall Semester 2001. Your grade point average as a full-time student places you in the top 50 students attending Taft College. You have met the criteria of carrying 12 or more units with a GPA of 3.5 or better and with no grade lower than a "B." This is not an easy task, requiring both a good mind and hard work to achieve.

The Board of Trustees and the entire faculty and staff appreciate your good efforts and want you to know how much we enjoy working with good students such as you.

We wish you great success in the semesters ahead!

Sincerely,

D. Roe Darnell, Ed. D.
Superintendent/President

29 Emmons Park Drive · Taft, California 93268 · 661.763.7700 • Fax 661.763.7705

Taft College

Extended Opportunity Programs and Services/
Cooperative Agencies Resources for Education

Certificate of Excellence

is hereby awarded to

James D. McPherson

for

Fall 2001 President's List

EOPS/CARE Coordinator

Dean of Student Services

TAFT COLLEGE
West Kern Community College District

September 11, 2002

James McPherson
P. O. Box 7001
Taft CA 93268

Dear James:

Because of your academic achievements, you are an honor member of the President's List for the Spring 2002. Your grade point average as a full-time student places you in the top 50 students attending Taft College. You have met the criteria of carrying 12 or more units with a GPA of 3.5 or better and with no grade lower than a "B." This is not an easy task, requiring both a good mind and hard work to achieve.

The Board of Trustees and the entire faculty and staff appreciate your good efforts and want you to know how much we enjoy working with good students such as you.

We wish you great success in the semesters ahead!

Sincerely,

D. Roe Darnell, Ed. D.
Superintendent/President

APPENDIX B

T.C.I. CERTIFICATE OF ACHIEVEMENT

Presented To

Marzuq Shariff Muhammad

(James D. McPherson)

In Recognition of Completion of

Real Estate

January 27, 2001

A. Santos, Instructor

John F. Runyon, Education Director

T.C.I. CERTIFICATE OF ACHIEVEMENT

Presented To

James McPherson

In Recognition of Completion of

Real Estate: Finance

April 1, 2001

A. Santos, Instructor

John F. Runyon, Education Director

Certificate of Completion

Presented to

James Mcphearson

For Successful Completion of the Taft College Computer Science Course

Microsoft Excel 2000

On This The 24th Day of July, 2001

Dale Patrick, Taft College Instructor

WCC/T.C.I. EDUCATIONAL SERVICES
CERTIFICATE OF COMPLETION

Presented To

James D. McPhearson

In Recognition for

Basic Commodities

On This Twenty-Third Day of April, Year Two Thousand and Two
Taft, California

D. Haeberman, I/M Instructor

I. Henley, Camp Education

APPENDIX C

Friends Outside National Organization

FRIENDS OUTSIDE®

Creative Conflict Resolutions Certificate

Marzuq Shariff Muhammad (James McPherson)

has satisfactorily completed the Basic Course in Nonviolent Conflict Resolutions

Lead Facilitator

Co-Facilitator

Judy Evans, Executive Director
Friends Outside National Organization

November 8, 1998
Date

CERTIFICATE

OF COMPLETION

This certifies that

JAMES MCPHERSON

has successfully completed 8 hours of

"THE MAN IN THE MIRROR"

Social Group

On this 4th Day of August, 1998

Sharon D. Boyd
Correctional Counselor

CERTIFICATE OF ACHIEVEMENT

THIS AWARD IS PRESENTED TO

James McPherson

IN RECOGNITION OF DISTINGUISHED ACHIEVEMENT FOR

"Man In The Mirror"

8 Hour Program

PRESENTED AT *FCI, Terminal Island, CA*

THIS *7th* DAY OF *April* , *1998*

SIGNATURE

Correctional Counselor

ORGANIZATION

Rediform 10502

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FCI Terminal Island

This certifies that

Marzuq Shariff Mohammad

James McPherson

has successfully completed the
10 Hour Basic HIV/AIDS Education Program

February 24, 1999

Theresa Bush, HIV/AIDS Instructor

Kay Coulson, Volunteer Coordinator
FCI Terminal Island

FEDERAL BUREAU OF PRISONS
F.C.I. - TERMINAL ISLAND, CALIFORNIA

JAMES McPHEARSON ~ 19695-

SUCCESSFULLY COMPLETED THE

DRUG EDUCATION CLASS

ON JANUARY 17, 2008

L. HOWELL, RN, USPHS
DRUG ABUSE TREATMENT SPECIALIST

DR. H. IHLE, COORDINATOR
DRUG ABUSE PROGRAMS

APPENDIX D

U. S. Department of Justice
UNICOR
Federal Prison Industries, Inc.

Outstanding Performance Certificate

AWARDED TO

JAMES MCPHERSON

FOR

ESTABLISHING AND ATTAINING GOALS WHICH REFLECT PRIDE IN WORKMANSHIP. THIS ACHIEVEMENT EXHIBITS THE DEDICATION REQUIRED FOR ACCOMPLISHMENT OF ASSIGNED DUTIES IN A TRULY PROFESSIONAL MANNER.

Awarded this 1 day of OCTOBER, 19 99 For the month of SEPTEMBER 99

Pride in Workmanship . . . 'The Golden Gate to Perfection'

Supervisor

Superintendent of Industries

U. S. Department of Justice

UNICOR

Federal Prison Industries, Inc.

Outstanding Performance Certificate

AWARDED TO

JAMES MCPHERSON

FOR

ESTABLISHING AND ATTAINING GOALS WHICH REFLECT PRIDE IN WORKMANSHIP. THIS ACHIEVEMENT EXHIBITS THE DEDICATION REQUIRED FOR ACCOMPLISHMENT OF ASSIGNED DUTIES IN A TRULY PROFESSIONAL MANNER.

Awarded this 1 day of JANUARY, 19 99 For the month of DECEMBER

Pride in Workmanship . . . 'The Golden Gate to Perfection'

Supervisor

Superintendent of Industries

CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing is true and accurate to the best information and belief, and that a copy of the foregoing document has been caused to be delivered this day upon:

Courtesy Copy to Chambers

Copy to Assistant U.S. Attorney via ECF NEF

Copy to Petitioner

Dated: April 22, 2008

/s/ JANET TUNG
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, CA 92101-5030
(619) 234-8467 (tel)
(619) 687-2666 (fax)
Janet_Tung@fd.org (email)